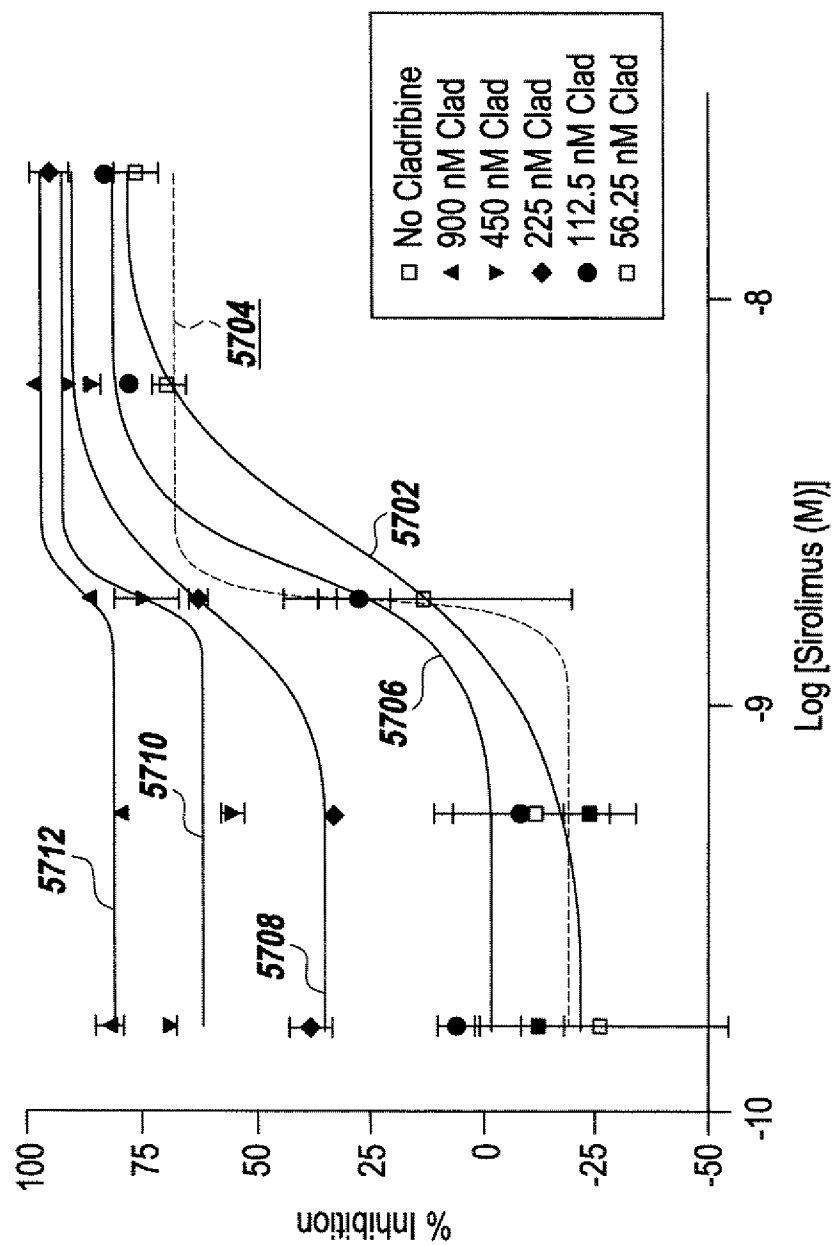


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FIG. 57



### **REMARKS/ARGUMENTS**

In response to the Final Office Action mailed July 9, 2006, Applicants propose to amend their application and request reconsideration in view of the amendments and the following remarks. In this amendment, Claim 1 is proposed to be amended, no claims have been added, and no claims have been cancelled without prejudice so that Claims 1-4 and 6-7 are currently pending. No new matter has been introduced.

Claims 1-4 and 7 were rejected as being anticipated by U.S. Patent Publication 2005/166841 to Robida (Robida). This rejection is respectfully traversed.

Robida discloses a stent that comprises struts 12 and includes openings 11a and 11b. Robida also discloses that therapeutic agents may be coated on the stent as well as other modal devices. Robida then goes onto provide a laundry list of drugs including rapamycin and cladribine.

Anticipation exists only if all of the elements of the claimed invention are present in a system or method disclosed, expressly or inherently, in a **sign** to prior art references. Therefore, if it can be shown that there is one difference between the claimed invention and what is closed in the single reference, there can be no anticipation.

The present invention as claimed in amended independent claim 1 clearly sets forth and claims a concentration of cladribine to be utilized in combination with rapamycin such that the drugs potentiate one another. Robida fails to disclose a concentration, just a laundry list. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

Claims 1-4 were rejected under 35 U.S.C. § 103(a) as being unpatentable over WO 01/87372 to Kopia et al. in view of U.S. Patent No. 5,516,781 to Morris et al. (Morris). Claims 6 and 7 were rejected under 35 U.S.C. § 103(a) as being

unpatentable over Kopia in view of Morris and further in view of U.S. Patent Publication No. 2003/36794 to Ragheb et al. (Ragheb). These rejections are respectfully traversed.

The MPEP, in section 706.02(j), sets forth the basic criteria that must be met in order to establish a *prima facie* case of obviousness:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. In *re* Vaeck, 947 F.2d, 488, 20 USPQ2d 1438 (Fed.Cir. 1991). See MPEP § 2143 - § 2143.03 for decisions pertinent to each of these criteria.

Section 2143.03 of the MPEP clarifies certain criteria in section 706.02(j).

"To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In *re* Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1074). "All words in a claim must be considered in judging the patentability of that claim against the prior art." In *re* Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. In *re* Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)."

Kopia discloses a stent coated with a polymer having a combination of drugs.

Morris discloses a method of preventing or treating hyperproliferative vascular disease in a mammal by administering an antiproliferative effective amount of rapamycin alone or in combination with mycophenolic acid.

Ragheb discloses coated implantable medical devices. Various polymers may be utilized in the coating, including acrylic and fluoropolymers.

None of the references, whether taken alone or in combination disclose or even remotely suggest the elements of amended independent claim 1 from which the rejected claims depend. Nor do the references cure the deficiencies of Robida as set forth above. Accordingly, for all the reasons set forth herein, reconsideration and withdrawal of the rejection is respectfully requested.

A minor correction to Figure 57 is made herein.

Applicant would be grateful for the opportunity to conduct a telephonic or in-person interview if the Examiner believes it would be helpful in disposing of the present case.

Respectfully submitted,

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